DOCUMENT RESUME

ED 150 404 CE 014 715

TITLE	Handy Reference Guide to the Fair Labor Standards Act.
INSTITUTION	Employment Standards Administration (DOL), Washington, D.C. Wage and Hour Div.
REPORT NO	WH-1282
PUB DATE	Dec 77
NOTE	14p.
EDRS PRICE	MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS	Child Labor; Employees; Federal Legislation; *Federal Regulation; *Labor Legislation; *Labor Standards; Overtime; Wages; Youth Employment
IDENTIFIERS	*Fair Labor Standards Act; United States

ABSTRACT

This guide provides general information about the application of the Fair Labor Standards Act (FLSA), as amended. Topics covered are basic wage standards, employees covered, tipped employees, employer-furnished facilities, subminimum wage provisions, equal pay provisions, exemptions, child labor provisions, recordkeeping, terms used in the FLSA, computing overtime pay, enforcement, recovery of back wages, and the wage and hour division. (EM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

CE

Handy Reference Guide to the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282
Issued December 1977

ED150404

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

CE 014 715

HANDY REFERENCE GUIDE TO
THE FAIR LABOR STANDARDS ACT

The Guide provides general information about the application of the Fair Labor Standards Act, as amended. It should not be considered in the same light as official statements of position contained in the regulations, interpretative bulletins, and other releases formally adopted by the Wage and Hour Division and published in the Federal Register. Copies of these publications and other information about the Act may be obtained free of charge from the Division's local offices.

CONTENTS

Basic Wage Standards 2
Who is Covered 3
Tipped Employees 5
Employer-Furnished Facilities 5
Equal Pay Provisions 5
Exemptions 6
Child Labor Provisions 7
Recordkeeping 8
Terms Used in the FLSA 9
Computing Overtime Pay 9
Enforcement 11
Recovery of Back Wages 11
The Wage and Hour Division 12

The Fair Labor Standards Act establishes minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards affecting more than 50 million full-time and part-time workers.

BASIC WAGE STANDARDS

Covered non-exempt workers are entitled to a minimum wage of not less than

Beginning January 1, 1978 -- $2.65 an hour
Beginning January 1, 1979 -- $2.90 an hour
Beginning January 1, 1980 -- $3.10 an hour
Beginning January 1, 1981 -- $3.35 an hour

AND

OVERTIME AT NOT LESS THAN ONE AND ONE-HALF TIMES THE EMPLOYEE'S REGULAR RATE IS DUE AFTER 40 HOURS OF WORK IN THE WORKWEEK

WAGES WHICH ARE REQUIRED BY THE ACT ARE DUE ON THE REGULAR PAY DAY FOR THE PAY PERIOD COVERED

Hospitals and residential care establishments may adopt, by agreement with the employees, a 14-day overtime period in lieu of the usual 7-day workweek, if the employees are paid at least time and a half their regular rate for hours worked over 8 in a day or 80 in a 14-day work period.

There are some exemptions from these basic provisions

Note: The FLSA does NOT require:

-- vacation, holiday, severance, or sick pay
-- a discharge notice or reason for discharge
-- rest periods, holidays off, or vacations
-- premimum pay rates for weekend or holiday work
-- pay raises or fringe benefits
-- a limit on hours of work for employees 16 years of age or older

These are matters for agreement between the employer and the employees or their authorized representatives.

WHO IS COVERED?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the Act.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and is --

(1) engaged in laundering or cleaning of clothing or fabrics; or
(2) engaged in the business of construction or reconstruction; or
(3) engaged in the operation of a hospital; an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises; a school for mentally or physically handicapped or gifted children; a preschool, an elementary or secondary school; or an institution of higher education (regardless of whether or not such hospital, institution or school is public or private or operated for profit or not for profit); or
(4) comprised exclusively of one or more retail or service establishments (as defined in the Act) whose annual gross volume of sales or business done is not less than --

	$250,000
Beginning July 1, 1978 --	$275,000
Beginning July 1, 1980 --	$325,000
Beginning January 1, 1982	$362,500

(Any retail or service enterprise which has an annual gross volume of not less than $250,000 and which later ceases to be a covered enterprise as a result of increases in this dollar volume test must continue to pay its employees at least the minimum wage in effect at the time of the enterprise's removal from coverage, as well as overtime in accordance with the Act.)

or (5) any other type of enterprise having an annual gross volume of sales or business done of not less than $250,000.

The dollar volume standard mentioned above in (4) and (5) excludes excise taxes at the retail level which are separately stated.

Any establishment which has as its only regular employees the owner thereof or members of the owner's immediate family is not considered part of any enterprise.

Federal employees are subject to the minimum wage, overtime, child labor and equal pay provisions of the Act. Employees of State and local governments are subject to the same provisions, unless they are engaged in traditional governmental activities, in which case they are subject to the child labor and equal pay provisions only. The Supreme Court has indicated that such traditional governmental activities include schools, hospitals, fire prevention, police protection, sanitation, public health, parks and recreation.

Employees who are not employed in a covered enterprise may still be entitled to the Act's minimum wage, overtime pay, equal pay, and child labor protections if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. These include --

(a) communication and transportation workers;
(b) employees who handle, ship, or receive goods moving in interstate commerce;
(c) clerical or other workers who regularly use the mails, telephone, or telegraph for interstate communication or who keep records on interstate transactions;
(d) employees who regularly cross State lines in the course of their work; and
(e) employees of independent employers who perform clerical, custodial, maintenance, or other work for firms engaged in commerce or in the production of goods for commerce.

Domestic service workers such as maids, day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least $50 in cash wages in a calendar quarter from their employer or (2) work a total of more than 8 hours a week for one or more employers.

TIPPED EMPLOYEES

Tipped employees are those who customarily and regularly receive more than $30 a month in tips. The employer may consider tips as part of wages, but such a wage credit must not exceed 50 percent of the minimum wage (beginning January 1, 1979, 45% is the maximum tip credit, and beginning January 1, 1980, 40% is the maximum tip credit).

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

EMPLOYER-FURNISHED FACILITIES

The reasonable cost or fair value of board, lodging, and other facilities provided by the employer may, as determined by the Wage and Hour Administrator, be considered part of wages.

SUBMINIMUM WAGE PROVISIONS

Learners, apprentices, and handicapped workers may, under certain circumstances, be paid less than the minimim wage, as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Special certificates issued by the Wage and Hour Administrator must be obtained by employers wishing to use these provisions.

Industry wage orders may set minimum rates below the generally applicable minimum wage under the Act for employees in Puerto Rico, the Virgin Islands, and American Samoa.

EQUAL PAY PROVISIONS

The equal pay provisions of the FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment on jobs that require equal skill, effort and responsibility and which are performed under similar working conditions.

Jobs need only be substantially equal-not identical-for comparison purposes. In addition, the comparison may be made in situations where employees of one sex are doing work formerly done by employees of the opposite sex.

Where a violation exists, an employer may not reduce the wage rate of an employee in order to eliminate the prohibited wage differential.

A wage differential based even in part on sex is prohibited. However, the law does permit differences based on factors other than sex (e.g., bona fide seniority or merit systems or systems that reward productivity).

In private employment, the equal pay provisions apply to most employees subject to the FLSA, including executive, administrative, professional and outside sales personnel. They apply not only to employers but to labor organizations. It is illegal for such organizations or their agents representing covered workers to cause or attempt to cause an employer to violate the law.

The Act's equal pay provisions also apply to federal, state and local government employees.

EXEMPTIONS

Some employees are excluded from the minimum wage or overtime provisions, or both, by specific exemptions. Because each exemption is narrowly defined under the law, an employer should carefully check its exact terms and conditions before applying it. The following examples are illustrative only and do not spell out the conditions for each. Detailed information is available from local Wage-Hour offices.

Exemptions from Both Minimum Wage and Overtime

Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary or secondary schools) and outside sales persons (as defined in the Division's regulations);

Employees of certain individually owned and operated small retail or service establishments not part of a covered enterprise;

Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations;

Farm workers employed by anyone who used no more than 500 man-days of farm labor in any calendar quarter of the preceding calendar year;

Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Provisions Only

Certain highly-paid commission employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or partsmen and mechanics servicing autos, trucks or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling to ultimate purchasers;

Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;

Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;

Domestic service workers residing in the employers' residences;

Employees of motion picture theaters; and

Farmworkers.

Partial Exemptions from Overtime

Employees of hotels and motels (other than maids or custodial employees) and restaurants must be paid overtime after 44 hours in a workweek effective January 1, 1978 and after 40 hours effective January 1, 1979. Maids and custodial employees of hotels and motels must be paid overtime after 40 hours in a workweek.

Partial overtime pay exemptions are provided for certain operations on agricultural commodities and for employees in certain bulk petroleum distribution.

CHILD LABOR PROVISIONS

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include lists of hazardous occupation orders for both farm and nonfarm jobs banned by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible kinds and hours of work, by age, are:

18 years or older: any job, whether hazardous or not, for unlimited hours;

16 and 17 years old: any nonhazardous job, for unlimited hours;

14 and 15 years old: outside of school hours in various nonmanufacturing nonmining, nonhazardous jobs, under these conditions: no more than 3

hours on a school day, 18 hours in a school week, 8 hours on a nonschool day or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.

Under a special provision, 14 and 15-year-olds enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers, perform in radio, television, movie or theatrical productions, work for parents in their solely owned nonfarm business (except in manufacturing or on hazardous jobs), gather evergreens and make evergreen wreaths.

Permissible kinds and hours of work for youths employed in agriculture are:

16 years and older: any job, whether hazardous or not, for unlimited hours;

14 and 15 years old: any nonhazardous farm job outside of school hours;

12 and 13 years old: outside of school hours in nonhazardous jobs, either with parents' written consent or on the same farm as the parents;

Under 12 years old: jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Local minors 10 and 11 years of age may work for no more than 8 weeks between June 1 and October 15 for employers who receive approval from the Secretary of Labor. This work must be confined to hand-harvesting short season crops outside school hours under very limited and specified circumstances prescribed by the Secretary of Labor.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parent.

RECORDKEEPING

Employers are required to keep records on wages, hours and other items, as specified in the Division's recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to both minimum wage and overtime pay provisions, the following records must be kept:

-- Personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age)

-- Hour and day when workweek begins
-- Total hours worked each workday and each workweek
-- Total daily or weekly straight-time earnings
-- Regular hourly pay rate for any week when overtime is worked
-- Total overtime pay for the workweek
-- Deductions from or additions to wages
-- Total wages paid each pay period
-- Date of payment and pay period covered

Records required for exempt employees differ from those for nonexempt workers and special information is required on employees working under uncommon pay arrangements or to whom lodging or other facilities are furnished. Employers who have homeworkers must make entries in handbooks supplied by the Division.

TERMS USED IN THE FLSA

Workweek

A workweek is a period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer. For purposes of minimum wage and overtime payment, each workweek stands alone; there can be no averaging of two or more workweeks (except for hospital or nursing home employees on an "8 and 80" schedule or seamen on American vessels). Employee coverage, compliance with wage payment requirements and the application of most exemptions are determined on a workweek basis.

Hours Worked

Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted to work.

COMPUTING OVERTIME PAY

Overtime must be paid at a rate of at least 1-1/2 times the employee's regular pay rate for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (excluding certain statutory exceptions). The following examples are based on a maximum 40-hour workweek:

1. Hourly rate (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least 1-1/2 times the regular rate for each hour over 40 is due.

Example: An employee paid $3.80 an hour works 44 hours in a workweek. The employee is entitled to at least 1-1/2 times $3.80, or $5.70, for each hour over 40. Pay for the week would be $152 for the first 40 hours, plus $22.80 for the four hours of overtime -- a total of $174.80.

2. Piece rate. The regular rate of pay for an employee paid on a piece work basis is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional 1/2 time this regular rate for each hour over 40, besides the full piece-work earnings.

Example: An employee paid on a piece work basis works 45 hours in a week and earns $162. The regular pay rate for that week is $162 divided by 45, or $3.60 an hour. In addition to the straight time pay, the employee is entitled to $1.80 (half the regular rate) for each hour over 40.

Another way to compensate piece-workers for overtime, if agreed to before the work is performed, is to pay 1-1/2 times the piece rate for each piece produced during overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

3. Salaries -- the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $150 a week for whatever number of hours of work are required. Under this pay agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $3 ($150 divided by 50 hours). In addition to the salary, 1/2 the regular rate, or $1.50, is due for each of the 10 overtime hours, for a total of $165 for the week. If the employee works 54 hours, the regular rate will be $2.78 (150 divided by 54). In that case, an additional $1.39 is due for each of the 14 overtime hours, for a total of $169.46 for the week.

In no case may the regular rate be less than the minimum wage required by the Act.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

ENFORCEMENT

The Wage and Hour Division administers and enforces the law with respect to private employment, State and local government employment, and federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The Civil Service Commission is responsible for enforcement with regard to all other federal employees.

The Wage-Hour Division's enforcement of the FLSA is carried out by compliance officers stationed across the U.S. As the Division's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the Act. Where violations are found, they also may recommend changes in employment practices, in order to bring an employer into compliance with the law.

It is a violation of the FLSA to fire or in any other manner discriminate against an employee for filing a complaint or participating in a legal proceeding under the law.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to $1,000 for each violation.

RECOVERY OF BACK WAGES

The FLSA provides for the following methods of recovering unpaid minimum and/or overtime wages:

1. The Division may supervise payment of back wages.

2. The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.

3. An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.

4. The Secretary may obtain an injunction to restrain any person from violating the law, including the unlawful withholding of proper minimum wage and overtime compensation

Any amount owed to an employee in violation of the equal pay provisions is deemed unpaid minimum wages or unpaid overtime compensation under the Act.

An employee may not bring suit if he or she has been paid back wages under the supervision of the Division or if the Secretary has already filed suit to recover the wages.

A two-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a three-year statute applies.

THE WAGE AND HOUR DIVISION

In addition to the FLSA, the Wage and Hour Division enforces and administers a number of other labor laws. Among these are:

- the Davis-Bacon Act (determines wage rates for federally financed or assisted construction)
- the Walsh-Healey Public Contracts Act (determines wage rates for contracts to provide goods to the federal government)
- the McNamara-O'Hara Service Contract Act (determines wage rates for contracts to provide services to the federal government)
- the Contract Work Hours and Safety Standards Act (sets overtime standards for federal contracts)
- the Age Discrimination in Employment Act (protects persons aged 40 to 65 from arbitrary employment discrimination based on age)
- the Farm Labor Contractor Registration Act (protects migrant farm workers by imposing certain restrictions and requirements on their crew leaders)
- the Wage Garnishment Law (limits amount of individual's income that may be legally garnished and prohibits the firing of an employee whose pay is garnished for payment of a single debt).

More detailed information on the FLSA and other laws administered by the Division is available from local Wage-Hour offices, which are listed in the white pages of most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage and Hour Division.